

**HEALTHCARE REFORM**  
**WHAT BUSINESSES NEED TO DO TODAY**

The Lancaster Chamber  
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**TWO NEW LAWS**

- **Patient Protection and Affordable Care Act (H.R. 3590) – Signed into law March 23, 2010**
- **Health Care and Education Reconciliation Act (H.R. 4872) – Signed into law March 30, 2010**

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**KEY EFFECTIVE DATES**

- 1/1/10
- 3/23/10
- 6/21/10
- 9/23/10 (Benefit Plan Years Beginning on or after)
- 1/1/11
- 1/1/13
- 1/1/14\*\*\*
- 1/1/18

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### "GRANDFATHERED PLANS"

- Those in existence on March 23, 2010
- Grandfathered vs. New Plans: A distinction without (much of) a difference?

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### ORGANIZING YOUR COMPLIANCE PLAN IN THREE PHASES

- What needs to be done now?
- What needs to be done between June 2010 and January 2014?
- What needs to be done on January 1, 2014 and thereafter?

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### WHAT NEEDS TO BE DONE NOW

- Can You take advantage of Small Business Tax Credit?
  - No more than 25 FTEs
  - Average salary no more than \$50,000
  - Up to 35% tax credit for cost of providing employee health coverage

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**WHAT NEEDS TO BE DONE NOW**

- **Are you ready to comply with requirements for nursing mothers?**
  - "Reasonable" unpaid breaks must be permitted if:
    - Mother of child (under 1 year) needs time to express milk for child
    - Employer must provide space other than rest room
    - Employers with under 50 employees exempt if "undue hardship"



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**WHAT NEEDS TO BE DONE NOW**

- **Do your policies and plans comply with new provisions prohibiting discrimination?**
  - Employers may not discriminate against employees for receiving subsidies under Act or for reporting violations of Act
  - Plans may not establish eligibility rules which discriminate on basis of health status, medical condition, claims experience, medical history, genetic information, or disability



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**2014 AND BEYOND**

- **A four-pronged approach to reshaping the delivery of health coverage:**
  - Individual Responsibility
  - Health Insurance Exchanges
  - Employer Responsibility
  - Excise Tax for "Cadillac Plans" Effective 2018



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**INDIVIDUAL RESPONSIBILITY**

- Effective 2014, all individuals must obtain coverage or pay a penalty
- Penalty amounts range from greater of 1% of gross income or \$95/person in 2014 up to greater of 2.5% of gross income or \$695/person in 2016
- Children are penalized at ½ the rate
- Family maximum penalty of \$2085
- Penalty amounts adjusted thereafter with inflation



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**HEALTH INSURANCE EXCHANGES**

- Effective 2014, state-operated "exchanges" to serve as clearinghouses for carriers/co-ops to compete for business from small employers and individuals
- Small Business Health Options Program ("SHOP") exchange open to employers with 100 or fewer employees until 2017 (then open to larger employers)



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**HEALTH INSURANCE EXCHANGES**

- Only plans meeting federal standards may participate
- Employees who earn less than 400% the federal poverty level and who lack affordable employer-provided coverage are eligible for premium and cost-sharing subsidies



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**EMPLOYER RESPONSIBILITY**

- Effective 2014, employers with 50 or more FTEs during the preceding year must pay penalties for failing to provide affordable coverage
- **No Coverage Penalty:** If employer does not provide coverage and at least one employee obtains a premium subsidy in an Exchange, then employer pays non-deductible penalty of \$2000 X number of FTEs (excluding first 30 FTEs)



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**EMPLOYER RESPONSIBILITY**

- **Unaffordable Coverage Penalty:** If employer does provide coverage but employee enrolls in Exchange plan and receives subsidy, then \$3000 penalty per subsidized employee applies (only if employer contributes less than 60% of actuarial value of coverage and cost to employee exceeds 9.8% of gross income)



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**EMPLOYER RESPONSIBILITY**

- **Free Choice Vouchers:** Employees earning less than 400% of federal poverty level whose share of the premium for employer-provided coverage is between 8% and 9.8% of their gross income are entitled to "free choice vouchers" from employer (i.e. voucher in an amount equivalent to highest cost employer plan option for which employee is eligible to purchase coverage on exchange). Resulting savings go to employee as wages.



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**EMPLOYER RESPONSIBILITY**

- Voucher is deductible for employer
- FTE: 30 or more hours/week - Employers must combine PTE hours to meet threshold and consider all control group employees



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**2018: EXCISE TAX ON "CADILLAC PLANS"**

- 40% excise tax imposed on portion of plan premium that exceeds benchmarked cost threshold
- 2018 Cost Threshold: \$10,200 for single coverage; \$27,500 for family coverage.
- Cost threshold increases for high-risk occupations (e.g. construction, law enforcement, etc. by \$1650/single; \$3450/family)
- Thresholds increase thereafter with inflation
- Dental/vision excluded



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**IMMEDIATE AND SHORT-TERM IMPACT ON EMPLOYER GROUP HEALTH PLANS**



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**BACKGROUND**

- Will require significant regulatory guidance
- Will HHS be in a position to do so in a timely manner?
- Employers must focus on near-term requirements



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**THREE CATEGORIES OF CHANGES**

- Plan design and administration
- Financial
- Reporting and disclosure



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**GRANDFATHERED PLANS**

- Certain requirements do not apply to grandfathered plans
- What is a grandfathered plan?
  - In effect on March 23, 2010
  - Reenrollments
  - Adding dependents
- Special rule for union plans



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**GRANDFATHERED PLANS – OPEN ISSUES**

- Permissible modifications
- Change in insurers
- New enrollees
- Mergers or sales

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**PLAN DESIGN AND ADMINISTRATION – ALL PLANS**

- **Dependent adult child coverage until age 26**
  - Marital status is irrelevant
  - Tax-free
  - HHS to provide a definition of "dependent"
  - Exception for grandfathered plans
  - Impact on student verification and Michelle's Law
- **Age 27 Tax Rule**

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**PREEXISTING CONDITION EXCLUSION**

- **Effective September 23, 2010 with respect to children under age 19**
- **Full implementation in 2014**

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**LIFETIME AND ANNUAL MAXIMUMS**

- Prohibits lifetime limitations on "essential health benefits"
- Restricted annual limitations on essential health benefits are permissible until 2014
- How are insurers going to price coverage with no limits?



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**PROHIBITION ON RESCISSION OF COVERAGE**

- Prevents employers from rescinding coverage for current enrollees
- Exceptions for fraud, misrepresentation and nonpayment
- Mistake of fact and prospective plan changes excluding certain groups



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**FSA, HRA AND HSA LIMITATIONS**

- Reimbursement of over-the-counter medications (2011)
- Limitations on contributions (2013)
- Increased excise tax on nonqualified distributions



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**ENCOURAGEMENT OF DISENROLLMENT**

- Employer utilization of opt-outs is common
- Proof of other coverage
- Limited to high-risk pool?



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**AUTOMATIC ENROLLMENT**

- More than 200 full-time employees
- Mandatory opt-out
- Supercedes all state laws – just like 401(k) legislation
- Effective date?



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**PLAN DESIGN AND ADMINISTRATIVE CHANGES – NON-GRANDFATHERED PLANS**

- **Claims appeals and the reviews**
  - ERISA requirements
  - External review
  - Continued benefits
- **Preventive care without cost-sharing**
- **Nondiscrimination rules apply to insured plans**
- **Access to care**
  - Designation of PCP
  - Access to emergency services, pediatric care and OB-GYN care



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**FINANCIAL CHANGES –  
SMALL BUSINESS TAX CREDIT**

- 25 or fewer employees with average full-time wages under \$50,000
- Must uniformly subsidize at least 50% of the cost of coverage
- Beginning in 2010, credit is 35% of premiums paid (25% for tax-exempts)
- Increases to 50% (35% in 2014)
- Sliding scale for more than 10 employees with average wages in excess of \$25,000



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**EARLY RETIREE (55-64) SUBSIDY**

- Effective June 23, 2010
- Employers must submit applications
  - Process TBD
  - HHS will provide forms in June
- Reimbursement of 80% of claims between \$15,000 and \$90,000
- \$5 billion limitation on funds/2014 expiration



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**SIMPLE CAFETERIA PLANS**

- Less than 100 employees
- Minimum eligibility and participation
- Minimum employer contributions



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### MEDICARE PART D SUBSIDY

- Legislation eliminates "double dipping"
- Loss of deduction occurs in 2013
- Immediate financial accounting hit
- Congressional hearing has been scheduled



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### REPORTING AND DISCLOSURE CHANGES

- **Advanced notice of material modifications**
  - 60-day advanced notice is required
  - Compare current ERISA requirements
  - Timing and notification issues with respect to open enrollment
  - Significant penalty - \$1,000 per participant



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### UNIFORM SUMMARY OF BENEFITS

- Required to be distributed no later than March 23, 2012
- On or before March 23, 2011, HHS is required to publish guidance, including uniform format
- Four pages/12-point font
- Electronic delivery permissible
- Significant penalty - \$1,000 per participant



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**W-2 REPORTING**

- Must report the aggregate cost of employer provided coverage
- Valuation rules similar to COBRA



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**ADDITIONAL CHANGES IN 2014 – ALL PLANS**

- Preexisting condition exclusion
- Waiting periods
- Annual limits
- Dependent adult child coverage to age 26



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**ADDITIONAL CHANGES IN 2014 – NON-GRANDFATHERED PLANS**

- Wellness program reward limit
- Participation in clinical trials
- Cost-sharing limitations



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